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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/883,998	06/20/2001	Nicholas V. Nechitailo	A7965	2408

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SUGHRUE, MION, ZINN, MACPEAK & SEAS, PLLC
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Washington, DC 20037-3213

EXAMINER

NASRI, JAVAID H

ART UNIT	PAPER NUMBER
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2839

DATE MAILED: 06/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/883,998

Applicant(s)

NECHITAILO, NICHOLAS V.

Examiner

Javaid Nasri

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 December 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16, 22 and 25 is/are allowed.
- 6) ☒ Claim(s) 1-15, 17-21, 23 and 24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on 25 June 2002 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Objections

1. Claims 1-10 and 24 are objected to because of the following informalities:

- a) In claim 1, line 3, change "standard" to -- stranded --.
- b) In claim 24, line 3, change "standard" to -- stranded --.

It should be understood that these are few examples only. Applicant is requested to check all the claims and correct them appropriately.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- a) In claims 1 and 11, lines 6 and 5 respectively, it is not clear one different type of material is respect to which material.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

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such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 3-13, 17-21, 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Field et al (cited in previous office action) in view of the admitted known in the art material disclosed in the specification page 5, lines 6-11).

Field et al discloses (see figure 1), an outer protective sheath, a plurality of stacks which are stranded to be radially positioned within the outer protective sheath, each of the plurality of stacks includes a plurality of buffer tubes, buffer tubes contain optical fiber/ribbon, composite tape (34, 54, 50, bonded to a substrate, see col. 4, lines 1-14), gel (54), centrally positioned axial member (21), second buffer tube, rolling is done helically (see figures 1 and 2), outer most protective sheath (36).

However, Field et al does not disclose:

- a) the piece of wound composite tape includes a combination of fibers of a mesh type substrate with at least one different type of material. Field et al discloses composite tape (34, 54, 50, bonded to a substrate, see col. 4, lines 1-14), therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention for Field et al to use well known material such as Nextel 3M Flame Stopping Dot Paper) to make composite tape in view of the admitted known in the art material disclosed in the specification page 5, lines 6-11) in order to have adequate tensile and compression strength properties.
- b) the axial member is formed of from a wound piece of composite tape, it would have been obvious to one of ordinary skill in the art, at the time of

the invention for Field et al to use well known material such as Nextel 3M Flame Stopping Dot Paper) to make the axial member from a composite tape in view of the admitted known in the art material disclosed in the specification page 5, lines 6-11) in order to have adequate tensile and compression strength properties.

Allowable Subject Matter

6. Claims 16, 22 and 25 are allowed.
7. Claims 2, 14 and 15 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

REASONS FOR ALLOWANCE

8. The following is an examiner's statement of reasons for allowance:

The reason for allowance of the claims is the inclusion of the limitation,

- a) each of the plurality of stacks is formed to have one of a triangular and trapezoidal shape, in combination with other limitations in the claim which is not found in the prior art reference of record.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Response to Arguments

9. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

Response to Interview


10. It should be noted that obvious type of rejection is used to reject claim 20.

Contact

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Javaid Nasri whose telephone number is 703 308 5876. The examiner can normally be reached on Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynn Feild can be reached on 703 308 2710. The fax phone numbers for the organization where this application or proceeding is assigned are 703 308 7722 for regular communications and 703 308 7724 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308 0956.


Javaid Nasri
Primary Examiner
Art Unit 2839

JNL
jhn
June 16, 2003